Liſt of the college anno 1575 - - 44
. . . . in it no Licentiate ibid
. . . . only Fellows and Strangers ibid
. . . . only two candidates - ibid
. . . . one a Stranger - - ibid
. . . . anno 1752 - - 86
Mead Dr. Richard with a *foreign degree* 92
Micklethwaite Sr. John, took his degree at Padua, anno 1638
. . . . . Admitted candid. 1642 } 96
. . . . . Incorporated in Ox. 1648 }
Money, arbitrary ſums of, exacted from the Licentiates - - 35
. . in matters of, the Licentiates treated as Fellows - - 63
Name of a degree from Ox. or Camb. of what power in the hands of the college - - 89
Opprobrium of the college what is - 61
Oxford or *Cambridge* not named in the Letters pat. except for practiſing in the country 47
. . . . . nor in the ſtat. of the college 71
Parentheſis, Oxford and Cambridge put into a, no good argument that a Fellow of the college of Phyſicians ſhould be of either 72
Patents Letters of Hen. VIII - - 5

Phyſicians,

Physicians, neither of Ox. or Camb. can practise in London 'till admitted by the college - - - 47
. . *of London*, a parliamentary name for the college - 19, 76
. . *the corporation of* ibid
. . *examined*, approved and admitted members of the one parliamentary body - 27, 28
. . . have full liberty of practice - 66
. . . excused from juries - - 10
. . . finding arms - - 32, 33
. . . Parish offices - - 82
Physick, the universal state of - - 1
. . . till restrained by Hen. VIII. ibid
. . . to the learned - - 11
. . . by the college, to whom they please 90
Pretence, the only of the college to exclude the Licentiates - ibid
Privileges, of the college the Licentiates entitled to, equally with the Fellows - - 81
Rest, the, who are - - - 45
Secrets of the college, the Licentiates are bound to keep - - 63
Sponsio a præside data - - 47
Statutes ought to be interpreted by Statutes - - 49, 50
Statutum alterum - - 71
. . . . De candidatis - - 64
. . . . explained quite away - - 72

Statutum,

INDEX.

Statutum,
. . . De comitiis - - - 50
. . . Conſiliariis - - - 48
. . . Converſatione morali - - 68
. . . Elect. creandis - - 46
. . . Permiſſis - - - 61
. . . explained - - - 62
. . . the reaſons of - - - 77
. . . Veſtitu medicorum - - 52
Strangers of the college anno 1575 - 44
. . . one of two candidates, a ſtranger, ibid
Tax, illegal levied on Licentiates - 35, 63
Univerſities, all have equal power to confer degrees - - 89
. . . . *our own*, which are, determined by a vote of the college - ibid
. . . *foreign*, which are - - 88

FINIS.

ERRATA.

Page 5. line the laſt, read VICTORIA. P. 25, l. 11, r. CHARLES. P. 26, in the note, add, *p.* 78. P. 31, l. 11, r. *contend.* P. 49, l. 5, for : put a , P. 55, l. 23, r. SUFFERED. P. 56, l. 4, r. ADMISSUS. P. 61, l. 15, r. *opprobrium.* P. 66, l. 26, r. the——Ibid. l. laſt, r. *thought.* P. 81, l. 19, r. *and privileges.* P. 86, l. 16, r. STUKELY.

A

DISCOURSE

ON THE

STUDY

OF THE

LAW OF NATURE AND NATIONS,

&c. &c.

New Edition in
1828 in B.M.

518. R. 23

A

DISCOURSE

Francis ON THE Hargrave

STUDY

OF THE

LAW OF NATURE AND NATIONS;

INTRODUCTORY TO A

COURSE OF LECTURES

ON

THAT SCIENCE,

TO BE COMMENCED IN

LINCOLN'S INN HALL,

On Wednesday, Feb. 13, 1799,

IN PURSUANCE OF AN ORDER OF THE

HONOURABLE SOCIETY OF LINCOLN'S INN.

BY JAMES MACKINTOSH, ESQ.

OF LINCOLN'S INN,

BARRISTER AT LAW.

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1799.

FH
MVSEVM
BRITANNICVM

A

DISCOURSE,

&c.

BEFORE I begin a courſe of lectures on a ſcience of great extent and importance, I think it my duty to lay before the Public the reaſons which have induced me to undertake ſuch a labour, as well as a ſhort account of the nature and objects of the courſe which I propoſe to deliver. I have always been unwilling to waſte in unprofitable inactivity that leiſure which the firſt years of my profeſſion uſually allow, and which diligent men, even with moderate talents, might often employ in a manner neither diſcreditable to themſelves nor wholly uſeleſs to others. Deſirous that my own leiſure ſhould not be conſumed in ſloth, I anxiouſly looked about

for ſome way of filling it up, which might enable me, according to the meaſure of my humble abilities, to contribute ſomewhat to the ſtock of general uſefulneſs. I had long been convinced that public lectures, which have been uſed in moſt ages and countries to teach the elements of almoſt every part of learning, were the moſt convenient mode in which theſe elements could be taught; that they were the beſt adapted for the important purpoſes of awakening the attention of the ſtudent, of abridging his labours, of guiding his inquiries, of relieving the tediouſneſs of private ſtudy, and of impreſſing on his recollection the principles of ſcience. I ſaw no reaſon why the law of England ſhould be leſs adapted to this mode of inſtruction, or leſs likely to benefit by it, than any other part of knowledge. A learned gentleman, however, had already occupied that ground *, and will, I doubt not, perſevere in the uſeful labour which he has undertaken. On his province it was far from my wiſh to intrude. It appeared to me that a courſe of lectures on another ſcience cloſely connected with all liberal profeſſional ſtudies, and which had long been the ſubject of my own reading and reflection, might not only prove a moſt uſeful introduction to the

* See "A Syllabus of Lectures on the Law of England, "to be delivered in Lincoln's-Inn Hall, by M. Nolan, Eſq." London, 1796.

law,

law of England, but might alſo become an intereſting part of general ſtudy, and an important branch of the education of thoſe who were not deſtined for the profeſſion of the law. I was confirmed in my opinion by the aſſent and approbation of men, whoſe names, if it were becoming to mention them on ſo ſlight an occaſion, would add authority to truth, and furniſh ſome excuſe even for error. Encouraged by their approbation, I reſolved, without delay, to commence the undertaking, of which I ſhall now proceed to give ſome account; without interrupting the progreſs of my diſcourſe by anticipating or anſwering the remarks of thoſe who may, perhaps, ſneer at me for a departure from the uſual courſe of my profeſſion; becauſe I am deſirous of employing in a rational and uſeful purſuit that leiſure, of which the ſame men would have required no account, if it had been waſted on trifles, or even abuſed in diſſipation.

The ſcience which teaches the rights and duties of men and of ſtates, has, in modern times, been called the Law of Nature and Nations. Under this comprehenſive title are included the rules of morality, as they preſcribe the conduct of private men towards each other in all the various relations of human life; as they regulate both the obedience of citizens to the laws, and the authority of the magiſtrate in framing laws and adminiſtering

niſtering government; as they modify the intercourſe of independent commonwealths in peace, and preſcribe limits to their hoſtility in war. This important ſcience comprehends only that part of *private ethics* which is capable of being reduced to fixed and general rules. It conſiders only thoſe general principles of *juriſprudence* and *politics* which the wiſdom of the lawgiver adapts to the peculiar ſituation of his own country, and which the ſkill of the ſtateſman applies to the more fluctuating and infinitely varying circumſtances which affect its immediate welfare and ſafety. "For there are in nature certain fountains of juſtice whence all civil laws are derived, but as ſtreams; and like as waters do take tinctures and taſtes from the ſoils through which they run, ſo do civil laws vary according to the regions and governments where they are planted, though they proceed from the ſame fountains *." *Bacon's Dig. and Adv. of Learn.*---Works, vol. i. p. 101.

On the great queſtions of morality, of politics, and of municipal law, it is the object of this ſcience to deliver only thoſe fundamental truths of which the particular application is as extenſive as

* I have not been deterred by ſome petty incongruity of metaphor from quoting this noble ſentence. Mr. Hume had, perhaps, this ſentence in his recollection, when he wrote a remarkable paſſage of his works. See Hume's Eſſays, vol. ii. p. 352. ed. Lond. 1788.

the

the whole private and public conduct of men; to diſcover thoſe "fountains of juſtice," without purſuing the "ſtreams" through the endleſs variety of their courſe. But another part of the ſubject is treated with greater fulneſs and minuteneſs of application; namely, that important branch of it which profeſſes to regulate the relations and intercourſe of ſtates, and more eſpecially, both on account of their greater perfection and their more immediate reference to uſe, the regulations of that intercourſe as they are modified by the uſages of the civilized nations of Chriſtendom. Here this ſcience no longer reſts in general principles. That province of it which we now call the law of nations, has, in many of its parts, acquired among our European nations much of the preciſion and certainty of poſitive law, and the particulars of that law are chiefly to be found in the works of thoſe writers who have treated the ſcience of which I now ſpeak. It is becauſe they have claſſed (in a manner which ſeems peculiar to modern times) the duties of individuals with thoſe of nations, and eſtabliſhed their obligation on ſimilar grounds, that the whole ſcience has been called, "The Law of Nature and Na-
"tions."

Whether this appellation be the happieſt that could have been choſen for the ſcience, and by what ſteps it came to be adopted among our modern

dern moraliſts and lawyers *, are inquiries, perhaps, of more curioſity than uſe, and which, if they deſerve any where to be deeply purſued, will be purſued with more propriety in a full examination of the ſubject than within the ſhort limits of an introductory diſcourſe. Names are, however, in a great meaſure arbitrary; but the diſtribution of knowledge into its parts, though it may often perhaps be varied with little diſadvantage, yet certainly depends upon ſome fixed principles. The modern method of conſidering individual and national morality as the ſubjects of the ſame ſcience, ſeems to me as convenient and reaſonable an arrangement as can be adopted.

* The learned reader is aware that the "jus naturæ" and "jus gentium" of the Roman lawyers are phraſes of very different import from the modern phraſes, "law of nature "and law of nations." "Jus naturale," ſays Ulpian, "eſt "quod natura omnia animalia docuit." D. 1. 1. 1. 3. "Quod naturalis ratio inter omnes homines conſtituit, id "que apud omnes peræque cuſtoditur vocaturque jus gen-"tium." D. 1. 1. 9. But they ſometimes neglect this ſubtle diſtinction—"Jure naturali quod appellatur jus gen-"tium." I. 2. 1. 11. *Jus feciale* was the Roman term for our law of nations. "Belli quidem æquitas ſanctiſſime populi Rom. feciali jure perſcripta eſt." Off. 1. 11. Our learned civilian Zouch has accordingly entitled his work, "De Jure Feciali, ſive de Jure *inter* Gentes." The Chancellor D'Agueſſeau, probably without knowing the work of Zouch, ſuggeſted that this law ſhould be called, "*Droit* "*entre les Gens*" (Oeuvres, tom. ii. p. 337.), in which he has been followed by a late ingenious writer, Mr. Bentham, Princ. of Morals and Pol. p. 324. Perhaps theſe learned writers do employ a phraſe which expreſſes the ſubject of this law with more accuracy than our common language; but I doubt, whether innovations in the terms of ſcience always repay us by their ſuperior preciſion for the uncertainty and confuſion which the change occaſions.

The ſame rules of morality which hold together men in families, and which form families into commonwealths, alſo link together theſe commonwealths as members of the great ſociety of mankind. Commonwealths, as well as private men, are liable to injury, and capable of benefit, from each other; it is, therefore, their intereſt as well as their duty to reverence, to practiſe, and to enforce thoſe rules of juſtice, which control and reſtrain injury, which regulate and augment benefit, which, even in their preſent imperfect obſervance, preſerve civilized ſtates in a tolerable condition of ſecurity from wrong, and which, if they could be generally obeyed, would eſtabliſh, and permanently maintain, the well-being of the univerſal commonwealth of the human race. It is therefore with juſtice that one part of this ſcience has been called "*the natural law of individuals*," and the other, "*the natural law of ſtates*;" and it is too obvious to require obſervation *, that the application of both theſe laws, of the former as much as of the latter, is modified and varied by cuſtoms, conventions, character, and ſituation. With a view to theſe principles, the writers on general juriſprudence have conſidered ſtates as moral perſons; a mode of expreſſion which has been called a fiction of law, but which

* This remark is ſuggeſted by an objection of *Vattel*, which is more ſpecious than ſolid.—See his Prelim. § 6.

may

may be regarded with more propriety as a bold metaphor, uſed to convey the important truth, that nations, though they acknowledge nó common ſuperior, and neither can nor ought to be ſubjected to human puniſhment, are yet under the ſame obligations mutually to practiſe honeſty and humanity, which would have bound individuals, even if they could be conceived ever to have ſubſiſted without the protecting reſtraints of government; if they were not compelled to the diſcharge of their duty by the juſt authority of magiſtrates, and by the wholeſome terrors of the laws. With the ſame views this law has been ſtyled, and (notwithſtanding the objections of ſome writers to the vagueneſs of the language) appears to have been ſtyled with great propriety, "the law of nature." It may with ſufficient correctneſs, or at leaſt by an eaſy metaphor, be called a "*law*," inaſmuch as it is a ſupreme, invariable, and uncontrollable rule of conduct to all men, of which the violation is avenged by natural puniſhments, which neceſſarily flow from the conſtitution of things, and are as fixed and inevitable as the order of nature. It is "*the law of nature*," becauſe its general precepts are eſſentially adapted to promote the happineſs of man, as long as he remains a being of the ſame nature with which he is at preſent endowed, or, in other words, as long as he continues to be man, in all the variety of times, places,

and

and circumſtances, in which he has been known, or can be imagined to exiſt; becauſe it is diſcoverable by natural reaſon, and ſuitable to our natural conſtitution; becauſe its fitneſs and wiſdom are founded on the general nature of human beings, and not on any of thoſe temporary and accidental ſituations in which they may be placed. It is with ſtill more propriety, and indeed with the higheſt ſtrictneſs, and the moſt perfect accuracy, conſidered as a law, when, according to thoſe juſt and magnificent views which philoſophy and religion open to us of the government of the world, it is received and reverenced as the ſacred code, promulgated by the great Legiſlator of the univerſe for the guidance of his creatures to happineſs, guarded and enforced, as our own experience may inform us, by the penal ſanctions of ſhame, of remorſe, of infamy, and of miſery; and ſtill farther enforced by the reaſonable expectation of yet more awful penalties in a future and more permanent ſtate of exiſtence. It is the contemplation of the law of nature under this full, mature, and perfect idea of its high origin and tranſcendent dignity, that called forth the enthuſiaſm of the greateſt men, and the greateſt writers of ancient and modern times, in thoſe ſublime deſcriptions, where they have exhauſted all the powers of language, and ſurpaſſed all the other exertions, even of their own eloquence, in the

diſplay of the beauty and majeſty of this ſovereign and immutable law. It is of this law that Cicero has ſpoken in ſo many parts of his writings, not only with all the ſplendour and copiouſneſs of eloquence, but with the ſenſibility of a man of virtue; and with the gravity and comprehenſion of a philoſopher *. It is of this law, that Hooker ſpeaks in ſo ſublime a ſtrain: "Of Law, no leſs "can be ſaid, than that her ſeat is the boſom of "God, her voice the harmony of the world; all "things in heaven and earth do her homage, the "very leaſt as feeling her care, the greateſt as not "exempted from her power; both angels and "men, and creatures of what condition ſoever, "though each in different ſort and manner, yet "all with uniform conſent admiring her as the

* Eſt quidem vera lex, recta ratio, *naturæ congruens*, diffuſa in omnes, conſtans, ſempiterna, quæ vocet ad officium jubendo, vetando a fraude deterreat, quæ tamen neque probos fruſtra jubet aut vetat, neque improbos jubendo aut vetando movet. Huic legi neque obrogari fas eſt, neque derogari ex hâc aliquid licet, neque tota abrogari poteſt. Nec vero aut per ſenatum aut per populum ſolvi hac lege poſſumus. Neque eſt quærendus explanator aut interpres ejus alius. Nec erit alia lex Romæ, alia Athenis, alia nunc, alia poſthac, ſed et omnes gentes et omni tempore una lex et ſempiterna, et immortalis continebit, unuſque erit communis quaſi magiſter et imperator omnium Deus. Ille legis hujus inventor, diſceptator, lator, cui qui non parebit *ipſe ſe fugiet et naturam hominis aſpernabitur*, atque hoc ipſo luet maximas pœnas etiamſi cætera ſuppliicia quæ putantur effugerit.

Fragm. lib. iii. Cicer. de Republ. apud Lactant.

It is impoſſible to read ſuch precious fragments without deploring the loſs of a work which, for the benefit of all generations, *ſhould* have been immortal.

"mother

" mother of their peace and joy."—*Eccleſ. Pol. book i. in the concluſion.*

Let not thoſe, who, to uſe the language of the ſame Hooker, " talk of truth," without " ever " ſounding the depth from whence it ſpringeth," haſtily take it for granted, that theſe great maſters of eloquence and reaſon were led aſtray by the ſpecious deluſions of myſticiſm, from the ſober conſideration of the true grounds of morality in the nature, neceſſities, and intereſts of man. They ſtudied and taught the principles of morals; but they thought it ſtill more neceſſary, and more wiſe, a much nobler taſk, and more becoming a true philoſopher, to inſpire men with a love and reverence for virtue *. They were not contented with elementary ſpeculations. They examined the foundations of our duty, but they felt and cheriſhed a moſt natural, a moſt ſeemly, a moſt rational enthuſiaſm, when they contemplated the majeſtic edifice which is reared on theſe ſolid foundations. They devoted the higheſt exertions of their mind to ſpread that beneficent enthuſiaſm among men. They conſecrated as a homage to virtue the moſt perfect fruits of their genius. If

* Age vero urbibus conſtitutis ut fidem colere et juſtitiam retinere diſcerent et aliis parere ſuâ voluntate conſueſcerent, ac non modo labores excipiendos communis commodi cauſâ ſed etiam vitam amittendam exiſtimarent; qui tandem fieri potuit niſi homines ea quæ ratione inveniſſent eloquentiâ perſuadere potuiſſent.—*Cic. de Inv. Rhet. lib. i. in proem.*

theſe grand ſentiments of "the good and fair," have ſometimes prevented them from delivering the principles of ethics with the nakedneſs and dryneſs of ſcience, at leaſt, we muſt own that they have choſen the better part; that they have preferred virtuous feeling to moral theory; and practical benefit to ſpeculative exactneſs. Perhaps theſe wiſe men may have ſuppoſed that the minute diſſection and anatomy of Virtue might, to the ill-judging eye, weaken the charm of her beauty.

It is not for me to attempt a theme which has perhaps been exhauſted by theſe great writers. I am indeed much leſs called upon to diſplay the worth and uſefulneſs of the law of nations, than to vindicate myſelf from preſumption in attempting a ſubject which has been already handled by ſo many maſters. For the purpoſe of that vindication it will be neceſſary to ſketch a very ſhort and ſlight account (for ſuch in this place it muſt unavoidably be) of the progreſs and preſent ſtate of the ſcience, and of that ſucceſſion of able writers who have gradually brought it to its preſent perfection.

We have no Greek or Roman treatiſe remaining on the law of nations. From the title of one of the loſt works of Ariſtotle, it appears that

that he compoſed a treatiſe on the laws of war *, which, if we had the good fortune to poſſeſs it, would doubtleſs have amply ſatisfied our curioſity, and would have taught us both the practice of the ancient nations and the opinions of their moraliſts, with that depth and preciſion which diſtinguiſh the other works of that great philoſopher. We can now only imperfectly collect that practice and thoſe opinions from various paſſages which are ſcattered over the writings of philoſophers, hiſtorians, poets, and orators. When the time ſhall arrive for a more full conſideration of the ſtate of the government and manners of the ancient world, I ſhall be able, perhaps, to offer ſatisfactory reaſons why theſe enlightened nations did not ſeparate from the general province of ethics that part of morality which regulates the intercourſe of ſtates, and erect it into an independent ſcience. It would require a long diſcuſſion to unfold the various cauſes which united the modern nations of Europe into a cloſer ſociety; which linked them together by the firmeſt bands of mutual dependence, and which thus, in proceſs of time, gave to the law that regulated their intercourſe greater importance, higher improvement, and more binding force. Among theſe cauſes we may enumerate a common extraction, a common religion, ſimilar manners, inſtitutions, and lan-

* Δικαίωματα των πολεμων.

guages;

guages; in earlier ages the authority of the See of Rome, and the extravagant claims of the Imperial crown; in later times the connexions of trade, the jealouſy of power, the refinement of civilization, the cultivation of ſcience, and, above all, that general mildneſs of character and manners which aroſe from the combined and progreſſive influence of chivalry, of commerce, of learning, and of religion. Nor muſt we omit the ſimilarity of thoſe political inſtitutions which, in every country that had been over-run by the Gothic conquerors, bore diſcernible marks (which the revolutions of ſucceeding ages had obſcured, but not obliterated) of the rude but bold and noble outline of liberty that was originally ſketched by the hand of theſe generous barbarians. Theſe and many other cauſes conſpired to unite the nations of Europe in a more intimate connexion and a more conſtant intercourſe, and of conſequence made the regulation of their intercourſe more neceſſary, and the law that was to govern it more important. In proportion as they approached to the condition of provinces of the ſame empire, it became almoſt as eſſential that Europe ſhould have a preciſe and comprehenſive code of the law of nations, as that each country ſhould have a ſyſtem of municipal law. The labours of the learned accordingly began to be directed to this ſubject in the ſixteenth century, ſoon after the revival of learning, and after that regular diſtribution of power and territory

which

which has ſubſiſted, with little variation, until our times. The critical examination of theſe early writers would perhaps not be very intereſting in an extenſive work, and it would be unpardonable in a ſhort diſcourſe. It is ſufficient to obſerve that they were all more or leſs ſhackled by the barbarous philoſophy of the ſchools, and that they were impeded in their progreſs by a timorous deference for the inferior and technical parts of the Roman law, without raiſing their views to the comprehenſive principles which will for ever inſpire mankind with veneration for that grand monument of human wiſdom. It was only indeed in the ſixteenth century that the Roman law was firſt ſtudied and underſtood as a ſcience connected with Roman hiſtory and literature, and illuſtrated by men whom Ulpian and Papinian would not have diſdained to acknowledge as their ſucceſſors*. Among the writers of that age we may perceive the ineffectual attempts, the partial advances, the occaſional ſtreaks of light which always precede great diſcoveries, and works that are to inſtruct poſterity.

The reduction of the law of nations to a ſyſtem was reſerved for Grotius. It was by the advice of

* Cujacius, Briſſonius, Hottomannus, &c. &c. — *Vide* Gravina Orig. Jur. Civil. p. 132—138. edit. Lipſ. 1737.
Leibnitz, a great mathematician as well as philoſopher, declares that he knows nothing which approaches ſo near to the method and preciſion of geometry as the Roman law.— Op. tom. iv. p. 254.

Lord Bacon and Peireſc that he undertook this arduous taſk. He produced a work which we now indeed juſtly deem imperfect, but which is perhaps the moſt complete that the world has yet owed, at ſo early a ſtage in the progreſs of any ſcience, to the genius and learning of one man. So great is the uncertainty of poſthumous reputation, and ſo liable is the fame even of the greateſt men to be obſcured by thoſe new faſhions of thinking and writing which ſucceed each other ſo rapidly among poliſhed nations, that Grotius, who filled ſo large a ſpace in the eye of his contemporaries, is now perhaps known to ſome of my readers only by name. Yet if we fairly eſtimate both his endowments and his virtues, we may juſtly conſider him as one of the moſt memorable men who have done honour to modern times. He combined the diſcharge of the moſt important duties of active and public life with the attainment of that exact and various learning which is generally the portion only of the recluſe ſtudent. He was diſtinguiſhed as an advocate and a magiſtrate, and he compoſed the moſt valuable works on the law of his own country; he was almoſt equally celebrated as an hiſtorian, a ſcholar, a poet, and a divine; a diſintereſted ſtateſman, a philoſophical lawyer, a patriot who united moderation with firmneſs, and a theologian who was taught candour by his learning. Unmerited exile did not damp his patriotiſm; the bitterneſs of controverſy did

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not extinguiſh his charity. The ſagacity of his numerous and fierce adverſaries could not diſcover a blot on his character; and in the midſt of all the hard trials and galling provocations of a turbulent political life, he never once deſerted his friends when they were unfortunate, nor inſulted his enemies when they were weak. In times of the moſt furious civil and religious faction he preſerved his name unſpotted, and he knew how to reconcile fidelity to his own party, with moderation towards his opponents. Such was the man who was deſtined to give a new form to the law of nations, or rather to create a ſcience, of which only rude ſketches and indigeſted materials were ſcattered over the writings of thoſe who had gone before him. By tracing the laws of his country to their principles, he was led to the contemplation of the law of nature, which he juſtly conſidered as the parent of all municipal law*. Few works were more celebrated than that of Grotius in his own days, and in the age which ſucceeded. It has, however, been the faſhion of the laſt half-century to depreciate his work as a ſhapeleſs compilation, in which reaſon lies buried under a maſs of authorities and quotations. This faſhion originated among French wits and declaimers, and it has been, I know not for what

* Proavia juris civilis.—De Jur. Bell. ac Pac. Proleg. § 16.

reaſon, adopted, though with far greater moderation and decency, by ſome reſpectable writers among ourſelves. As to thoſe who firſt uſed this language, the moſt candid ſuppoſition that we can make with reſpect to them is, that they never read the work; for, if they had not been deterred from the peruſal of it by ſuch a formidable diſplay of Greek characters, they muſt ſoon have diſcovered that Grotius never quotes on any ſubject till he has firſt appealed to ſome principles, and often, in my humble opinion, though not always, to the ſoundeſt and moſt rational principles.

But another ſort of anſwer is due to ſome of thoſe * who have criticized Grotius, and that anſwer might be given in the words of Grotius himſelf †. He was not of ſuch a ſtupid and ſervile caſt of mind, as to quote the opinions of poets or orators, of hiſtorians and philoſophers, as thoſe of judges, from whoſe deciſion there was no appeal. He quotes them, as he tells us himſelf, as witneſſes whoſe conſpiring teſtimony, mightily ſtrengthened and confirmed by their diſcordance on almoſt every other ſubject, is a concluſive proof of the unanimity of the whole human race on the great rules of duty and the fundamental principles of morals. On ſuch matters, poets

* Dr. Paley, Princ. of Mor. and Polit. Philoſ. Pref. p. xiv. and xv.

† Grot. Jur. Bel. et Pac. Proleg. § 40.

and

and orators are the moſt unexceptionable of all witneſſes; for they addreſs themſelves to the general feelings and ſympathies of mankind; they are neither warped by ſyſtem, nor perverted by ſophiſtry; they can attain none of their objects; they can neither pleaſe nor perſuade if they dwell on moral ſentiments not in uniſon with thoſe of their readers. No ſyſtem of moral philoſophy can ſurely diſregard the general feelings of human nature and the according judgment of all ages and nations. But where are theſe feelings and that judgment recorded and preſerved? In thoſe very writings which Grotius is gravely blamed for having quoted. The uſages and laws of nations, the events of hiſtory, the opinions of philoſophers, the ſentiments of orators and poets, as well as the obſervation of common life, are, in truth, the materials out of which the ſcience of morality is formed; and thoſe who neglect them are juſtly chargeable with a vain attempt to philoſophize without regard to fact and experience, the ſole foundation of all true philoſophy.

If this were merely an objection of taſte, I ſhould be willing to allow that Grotius has indeed poured forth his learning with a profuſion that ſometimes rather encumbers than adorns his work, and which is not always neceſſary to the illuſtration of his ſubject. Yet, even in making that conceſſion, I ſhould rather yield to the taſte of others than ſpeak

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from my own feelings. I own that ſuch richneſs and ſplendour of literature have a powerful charm for me. They fill my mind with an endleſs variety of delightful recollections and aſſociations. They relieve the underſtanding in its progreſs through a vaſt ſcience, by calling up the memory of great men and of intereſting events. By this means we ſee the truths of morality clothed with all the eloquence (not that could be produced by the powers of one man, but) that could be beſtowed on them by the collective genius of the world. Even Virtue and Wiſdom themſelves acquire new majeſty in my eyes, when I thus ſee all the great maſters of thinking and writing called together, as it were, from all times and countries, to do them homage, and to appear in their train.

But this is no place for diſcuſſions of taſte, and I am very ready to own that mine may be corrupted. The work of Grotius is liable to a more ſerious objection, though I do not recollect that it has ever been made. His method is inconvenient and unſcientific. He has inverted the natural order. That natural order undoubtedly dictates, that we ſhould firſt ſearch for the original principles of the ſcience in human nature; then apply them to the regulation of the conduct of individuals, and laſtly, employ them for the deciſion of thoſe difficult and complicated queſtions

queſtions that ariſe with reſpect to the intercourſe of nations. But Grotius has choſen the reverſe of this method. He begins with the conſideration of the ſtates of peace and war, and he examines original principles only occaſionally and incidentally as they grow out of the queſtions which he is called upon to decide. It is a neceſſary conſequence of this diſorderly method, which exhibits the elements of the ſcience in the form of ſcattered digreſſions, that he ſeldom employs ſufficient diſcuſſion on theſe fundamental truths, and never in the place where ſuch a diſcuſſion would be moſt inſtructive to the reader.

This defect in the plan of Grotius was perceived, and ſupplied, by Puffendorff, who reſtored natural law to that ſuperiority which belonged to it, and with great propriety treated the law of nations as only one main branch of the parent ſtock. Without the genius of his maſter, and with very inferior learning, he has yet treated this ſubject with ſound ſenſe, with clear method, with extenſive and accurate knowledge, and with a copiouſneſs of detail ſometimes indeed tedious, but always inſtructive and ſatisfactory. His work will be always ſtudied by thoſe who ſpare no labour to acquire a deep knowledge of the ſubject; but it will, in our times, I fear, be oftener found on the ſhelf than on the deſk of the general ſtudent. In the time of Mr. Locke it was conſi-

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dered as the manual of thoſe who were intended for active life; but in the preſent age I believe it will be found that men of buſineſs are too much occupied, men of letters are too faſtidious, and men of the world too indolent, for the ſtudy or even the peruſal of ſuch works. Far be it from me to derogate from the real and great merit of ſo uſeful a writer as Puffendorff. His treatiſe is a mine in which all his ſucceſſors muſt dig. I only preſume to ſuggeſt, that a book ſo prolix, and ſo utterly void of all the attractions of compoſition, is likely to repel many readers who are intereſted, and who might perhaps be diſpoſed to acquire ſome knowledge of the principles of public law.

Many other circumſtances might be mentioned, which conſpire to prove that neither of the great works of which I have ſpoken, has ſuperſeded the neceſſity of a new attempt to lay before the Public a Syſtem of the Law of Nations. The language of ſcience is ſo completely changed ſince both theſe works were written, that whoever was now to employ their terms in his moral reaſonings would be almoſt unintelligible to ſome of his hearers or readers; and to ſome among them too who are neither ill qualified nor ill diſpoſed to ſtudy ſuch ſubjects with conſiderable advantage to themſelves. The learned indeed well know how little novelty or variety is to

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be found in ſcientific diſputes. The ſame truths and the ſame errors have been repeated from age to age, with little variation but in the language; and novelty of expreſſion is often miſtaken by the ignorant for ſubſtantial diſcovery. Perhaps too very nearly the ſame portion of genius and judgment has been exerted in moſt of the various forms under which ſcience has been cultivated at different periods of hiſtory. The ſuperiority of thoſe writers who continue to be read, perhaps often conſiſts chiefly in taſte, in prudence, in a happy choice of ſubject, in a favourable moment, in an agreeable ſtyle, in the good fortune of a prevalent language, or in other advantages which are either accidental, or are the reſult rather of the ſecondary than of the higheſt faculties of the mind. —But theſe reflections, while they moderate the pride of invention, and diſpel the extravagant conceit of ſuperior illumination, yet ſerve to prove the uſe, and indeed the neceſſity, of compoſing, from time to time, new ſyſtems of ſcience adapted to the opinions and language of each ſucceeding period. Every age muſt be taught in its own language. If a man were now to begin a diſcourſe on ethics with an account of the "*moral entities*" of Puffendorff*, he would ſpeak an unknown tongue.

It

* I do not mean to impeach the ſoundneſs of any part of Puffendorff's reaſoning founded on moral entities. It may be explained in a manner conſiſtent with the moſt juſt philoſophy.

It is not, however, alone as a mere tranſlation of former writers into modern language that a new ſyſtem of public law ſeems likely to be uſeful. The age in which we live poſſeſſes many advantages, which are peculiarly favourable to ſuch an undertaking. Since the compoſition of the great works of Grotius and Puffendorff, a more modeſt, ſimple, and intelligible philoſophy has been introduced into the ſchools; which has indeed been groſsly abuſed by ſophiſts, but which, from the time of Locke, has been cultivated and improved by a ſucceſſion of diſciples worthy of their illuſtrious maſter. We are thus enabled to diſcuſs with preciſion, and to explain with clearneſs, the principles of the ſcience of human nature, which are in themſelves on a level with the capacity of every man of good ſenſe, and which only appeared to be abſtruſe from the unprofitable ſubtleties with which they were loaded, and the barbarous jargon in which they were expreſſed. The deepeſt doctrines of morality have ſince that time been treated in the perſpicuous and popular ſtyle, and with ſome degree of the beauty and eloquence of the ancient moraliſts. That philoſophy on which are founded the principles of our duty, if it has not become more certain (for morality ad-

ſophy. He uſed, as every writer muſt do, the ſcientific language of his own time. I only aſſert that, to thoſe who are unacquainted with ancient ſyſtems, his philoſophical vocabulary is obſolete and unintelligible.

mits no diſcoveries), is at leaſt leſs "harſh and "crabbed," leſs obſcure and haughty in its language, leſs forbidding and diſguſting in its appearance, than in the days of our anceſtors. If this progreſs of learning towards popularity has engendered (as it muſt be owned that it has) a multitude of ſuperficial and moſt miſchievous ſcioliſts, the antidote muſt come from the ſame quarter with the diſeaſe. Popular reaſon can alone correct popular ſophiſtry.

Nor is this the only advantage which a writer of the preſent age would poſſeſs over the celebrated juriſts of the laſt century. Since that time vaſt additions have been made to the ſtock of our knowledge of human nature. Many dark periods of hiſtory have ſince been explored. Many hitherto unknown regions of the globe have been viſited and deſcribed by travellers and navigators not leſs intelligent than intrepid. We may be ſaid to ſtand at the confluence of the greateſt number of ſtreams of knowledge flowing from the moſt diſtant ſources, that ever met at one point. We are not confined, as the learned of the laſt age generally were, to the hiſtory of thoſe renowned nations who are our maſters in literature. We can bring before us man in a lower and more abject condition than any in which he was ever before ſeen. The records have been partly opened to us

of thoſe mighty empires of Aſia *, where the beginnings of civilization are loſt in the darkneſs of an unfathomable antiquity. We can make human ſociety paſs in review before our mind, from the brutal and helpleſs barbariſm of *Terra del Fuego*, and the mild and voluptuous ſavages of Otaheite, to the tame, but ancient and immoveable civilization of China, which beſtows its own arts on every ſucceſſive race of conquerors; to the meek and ſervile natives of Hindoſtan, who preſerve their ingenuity, their ſkill and their ſcience, through a long ſeries of ages, under the yoke of foreign tyrants; to the groſs and incorrigible rudeneſs of the Ottomans, incapable of improvement, and extinguiſhing the remains of civilization among their unhappy ſubjects, once the moſt ingenious nations of the earth. We can examine almoſt every imaginable variety in the character, manners, opinions, feelings, prejudices and inſtitutions of mankind, into which they can be thrown,

* I cannot prevail on myſelf to paſs over this ſubject without paying my humble tribute to the memory of Sir W. Jones, who has laboured ſo ſucceſsfully in Oriental literature, whoſe fine genius, pure taſte, unwearied induſtry, unrivalled and almoſt prodigious variety of acquirements, not to ſpeak of his amiable manners and ſpotleſs integrity, muſt fill every one who cultivates or admires letters with reverence, tinged with a melancholy which the recollection of his recent death is ſo well adapted to inſpire. I hope I ſhall be pardoned if I add my applauſe to the genius and learning of Mr. Maurice, who treads in the ſteps of his illuſtrious friend; and who has bewailed his death in a ſtrain of genuine and beautiful poetry, not unworthy of happier periods of our Engliſh literature.

either

either by the rudeneſs of barbariſm, or by the capricious corruptions of refinement, or by thoſe innumerable combinations of circumſtances, which, both in theſe oppoſite conditions and in all the intermediate ſtages between them, influence or direct the courſe of human affairs. Hiſtory, if I may be allowed the expreſſion, is now a vaſt muſeum, in which ſpecimens of every variety of human nature may be ſtudied. From theſe great acceſſions to knowledge, lawgivers and ſtateſmen, but, above all, moraliſts and political philoſophers, may reap the moſt important inſtruction. They may plainly diſcover in all the uſeful and beautiful variety of governments and inſtitutions, and under all the fantaſtic multitude of uſages and rites which have prevailed among men, the ſame fundamental, comprehenſive truths, the ſacred maſter-principles which are the guardians of human ſociety, recogniſed and revered (with few and ſlight exceptions) by every nation upon earth, and uniformly taught (with ſtill fewer exceptions) by a ſucceſſion of wiſe men from the firſt dawn of ſpeculation to the preſent moment. The exceptions, few as they are, will, on more reflection, be found rather apparent than real. If we could raiſe ourſelves to that height from which we ought to ſurvey ſo vaſt a ſubject, theſe exceptions would altogether vaniſh; the brutality of a handful of ſavages would diſappear in the immenſe proſpect of human nature, and the murmurs of a few

licentious ſophiſts would not aſcend to break the general harmony. This conſent of mankind in firſt principles, and this endleſs variety in their application, which is one among many valuable truths which we may collect from our preſent extenſive acquaintance with the hiſtory of man, is itſelf of vaſt importance. Much of the majeſty and authority of virtue is derived from their conſent, and almoſt the whole of practical wiſdom is founded on their variety.

What former age could have ſupplied facts for ſuch a work as that of Monteſquieu? He indeed has been, perhaps juſtly, charged with abuſing this advantage, by the undiſtinguiſhing adoption of the narratives of travellers of very different degrees of accuracy and veracity. But if we reluctantly confeſs the juſtneſs of this objection; if we are compelled to own that he exaggerates the influence of climate, that he aſcribes too much to the foreſight and forming ſkill of legiſlators, and far too little to time and circumſtances, in the growth of political conſtitutions; that the ſubſtantial character and eſſential differences of governments are often loſt and confounded in his technical language and arrangement; that he often bends the free and irregular outline of nature to the impoſing but fallacious geometrical regularity of ſyſtem; that he has choſen a ſtyle of affected abruptneſs, ſententiouſneſs, and vivacity, ill ſuited

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to the gravity of his ſubject: after all theſe conceſſions (for his fame is large enough to ſpare many conceſſions), the Spirit of Laws will ſtill remain not only one of the moſt ſolid and durable monuments of the powers of the human mind, but a ſtriking evidence of the ineſtimable advantages which political philoſophy may receive from a wide ſurvey of all the various conditions of human ſociety.

In the preſent century a ſlow and ſilent, but very ſubſtantial mitigation has taken place in the practice of war; and in proportion as that mitigated practice has received the ſanction of time, it is raiſed from the rank of mere uſage, and becomes part of the law of nations. Whoever will compare our preſent modes of warfare with the ſyſtem of Grotius* will clearly diſcern the immenſe improvements which have taken place in that reſpect ſince the publication of his work, during a period, perhaps in every point of view, the happieſt to be found in the hiſtory of the world. In the ſame period many important points of public law have been the ſubject of conteſt both by argument and by arms, of which we find either no mention, or very obſcure traces, in the hiſtory of preceding times.

* Eſpecially thoſe chapters of the third book, entitled, *Temperamentum circa Captivos*, &c. &c.

MVSEVM BRITANNICVM

There

There are other circumſtances to which I allude with heſitation and reluctance, though it muſt be owned that they afford to a writer of this age ſome degree of unfortunate and deplorable advantage over his predeceſſors. Recent events have accumulated more terrible practical inſtruction on every ſubject of politics than could have been in other times acquired by the experience of ages. Men's wit, ſharpened by their paſſions, has penetrated to the bottom of almoſt all political queſtions. Even the fundamental rules of morality themſelves have, for the firſt time, unfortunately for mankind, become the ſubject of doubt and diſcuſſion. I ſhall conſider it as my duty to abſtain from all mention of theſe awful events, and of theſe fatal controverſies. But the mind of that man muſt indeed be incurious and indocile, who has either overlooked all theſe things, or reaped no inſtruction from the contemplation of them.

From theſe reflections it appears, that, ſince the compoſition of thoſe two great works on the Law of Nature and Nations which continue to be the claſſical and ſtandard works on that ſubject, we have gained both more convenient inſtruments of reaſoning and more extenſive materials for ſcience; that the code of war has been enlarged and improved; that new queſtions have been practically decided; and that new controverſies have ariſen regarding the intercourſe of independent ſtates,

and

and the firſt principles of morality and civil government.

Some readers may, however, think that in theſe obſervations which I offer, to excuſe the preſumption of my own attempt, I have omitted the mention of later writers, to whom ſome part of the remarks is not juſtly applicable. But, perhaps, farther conſideration will acquit me in the judgment of ſuch readers. Writers on particular queſtions of public law are not within the ſcope of my obſervations. They have furniſhed the moſt valuable materials; but I ſpeak only of a ſyſtem. To the large work of Wolffius, the obſervations which I have made on Puffendorff as a book for general uſe, will ſurely apply with tenfold force. His abridger, Vattel, deſerves, indeed, conſiderable praiſe. He is a very ingenious, clear, elegant, and uſeful writer. But he only conſiders one part of this extenſive ſubject, namely, the law of nations ſtrictly ſo called; and I cannot help thinking, that, even in this department of the ſcience, he has adopted ſome doubtful and dangerous principles, not to mention his conſtant deficiency in that fulneſs of example and illuſtration, which ſo much embelliſhes and ſtrengthens reaſon. It is hardly neceſſary to take any notice of the text-book of Heineccius, the beſt writer of elementary books with whom I am acquainted on any ſubject. Burlamaqui is an author of ſuperior

rior merit; but he confines himſelf too much to the general principles of morality and politics, to require much obſervation from me in this place. The ſame reaſon will excuſe me for paſſing over in ſilence the works of many philoſophers and moraliſts, to whom, in the courſe of my propoſed lectures, I ſhall owe and confeſs the greateſt obligations; and it might perhaps deliver me from the neceſſity of ſpeaking of the work of Dr. Paley, if I were not deſirous of this public opportunity of profeſſing my gratitude for the inſtruction and pleaſure which I have received from that excellent writer, who poſſeſſes, in ſo eminent a degree, thoſe invaluable qualities of a moraliſt, good ſenſe, caution, ſobriety, and perpetual reference to convenience and practice; and who certainly is thought leſs original than he really is, merely becauſe his taſte and modeſty have led him to diſdain the oſtentation of novelty, and becauſe he generally employs more art to blend his own arguments with the body of received opinions, ſo as that they are ſcarce to be diſtinguiſhed, than other men, in the purſuit of a tranſient popularity, have exerted to diſguiſe the moſt miſerable commonplaces in the ſhape of paradox.

No writer ſince the time of Grotius, of Puffendorff, and of Wolf, has combined an inveſtigation of the principles of natural and public law, with a full application of theſe principles to particular caſes;

caſes; and in theſe circumſtances, I truſt, it will not be deemed extravagant preſumption in me to hope that I ſhall be able to exhibit a view of this ſcience, which ſhall, at leaſt, be more intelligible and attractive to ſtudents, than the learned treatiſes of theſe celebrated men. I ſhall now proceed to ſtate the general plan and ſubjects of the lectures in which I am to make this attempt.

I. The being whoſe actions the law of nature profeſſes to regulate, is man. It is on the knowledge of his nature that the ſcience of his duty muſt be founded *. It is impoſſible to approach the threſhold of moral philoſophy, without a previous examination of the faculties and habits of the human mind. Let no reader be repelled from this examination, by the odious and terrible name of *metaphyſics*; for it is, in truth, nothing more than the employment of good ſenſe, in obſerving our own thoughts, feelings, and actions; and when the facts which are thus obſerved, are expreſſed as they ought to be, in plain language, it is, perhaps, above all other ſciences, moſt on a level with the capacity and information of the generality of thinking men. When it is thus expreſſed, it requires no previous qualification, but a ſound judgment, perfectly to comprehend it; and

* Natura enim juris explicanda eſt nobis, *eaque ab hominis repetenda naturâ*.—Cic. de Leg. lib. i. c. 5.

thoſe who wrap it up in a technical and myſterious jargon, always give us ſtrong reaſon to ſuſpect that they are not philoſophers but impoſtors. Whoever thoroughly underſtands ſuch a ſcience, muſt be able to teach it plainly to all men of common ſenſe. The propoſed courſe will therefore open with a very ſhort, and, I hope, a very ſimple and intelligible account of the powers and operations of the human mind. By this plain ſtatement of facts, it will not be difficult to decide many celebrated, though frivolous, and merely verbal controverſies, which have long amuſed the leiſure of the ſchools, and which owe both their fame and their exiſtence to the ambiguous obſcurity of ſcholaſtic language. It will, for example, only require an appeal to every man's experience, to prove that we often act purely from a regard to the happineſs of others, and are therefore ſocial beings; and it is not neceſſary to be a conſummate judge of the deceptions of language, to deſpiſe the ſophiſtical trifler, who tells us, that, becauſe we experience a gratification in our benevolent actions, we are therefore excluſively and uniformly ſelfiſh. A correct examination of facts will lead us to diſcover that quality which is common to all virtuous actions, and which diſtinguiſhes them from thoſe which are vicious and criminal. But we ſhall ſee that it is neceſſary for man to be governed not by his own tranſient and haſty opinion upon the tendency of every

every particular action, but by thoſe fixed and unalterable rules, which are the joint reſult of the impartial judgment, the natural feelings, and the embodied experience of mankind. The authority of theſe rules is, indeed, founded only on their tendency to promote private and public welfare; but the morality of actions will appear ſolely to conſiſt in their correſpondence with the rule. By the help of this obvious diſtinction we ſhall vindicate a juſt theory, which, far from being modern, is, in fact, as ancient as philoſophy, both from plauſible objections, and from the odious imputation of ſupporting thoſe abſurd and monſtrous ſyſtems which have been built upon it. Beneficial tendency is the foundation of rules, and the criterion by which habits and ſentiments are to be tried. But it is neither the immediate ſtandard, nor can it ever be the principal motive of action. An action, to be completely virtuous, muſt accord with moral rules, and muſt flow from our natural feelings and affections, moderated, matured, and improved into ſteady habits of right conduct *. Without, however, dwelling longer on ſubjects which cannot be clearly ſtated, unleſs they are fully unfolded, I content myſelf with obſerving, that it ſhall be my object, in this preliminary, but moſt important part of the courſe, to lay the foundations of morality ſo deeply in human nature,

* Eſt autem virtus nihil aliud quam in ſe perfecta atque ad ſummum perducta natura.—Cic. de Leg. lib. i. c. 8.

as may ſatisfy the coldeſt inquirer; and, at the ſame time, to vindicate the paramount authority of the rules of our duty, at all times, and in all places, over all opinions of intereſt and ſpeculations of benefit, ſo extenſively, ſo univerſally, and ſo inviolably, as may well juſtify the grandeſt and the moſt apparently extravagant effuſions of moral enthuſiaſm. If, notwithſtanding all my endeavours to deliver theſe doctrines with the utmoſt ſimplicity, any of my auditors ſhould ſtill reproach me for introducing ſuch abſtruſe matters, I muſt ſhelter myſelf behind the authority of the wiſeſt of men. "If they (the ancient moraliſts), before they had come to the popular and received notions of virtue and vice, had ſtaid a little longer upon the inquiry concerning *the roots of good and evil*, they had given, in my opinion, a great light to that which followed; and ſpecially if they had conſulted with nature, they had made their doctrines leſs prolix, and more profound."—*Bacon, Dign. and Adv. of Learn. book ii.* What Lord Bacon deſired for the mere gratification of ſcientific curioſity, the welfare of mankind now imperiouſly demands. Shallow ſyſtems of metaphyſics have given birth to a brood of abominable and peſtilential paradoxes, which nothing but a more profound philoſophy can deſtroy. However we may, perhaps, lament the neceſſity of diſcuſſions which may ſhake the habitual reverence of ſome men

men for thoſe rules which it is the chief intereſt of all men to practiſe, we have now no choice left. We muſt either diſpute, or abandon the ground. Undiſtinguiſhing and unmerited invectives againſt philoſophy, will only harden ſophiſts and their diſciples in the inſolent conceit, that they are in poſſeſſion of an undiſputed ſuperiority of reaſon; and that their antagoniſts have no arms to employ againſt them, but thoſe of popular declamation. Let us not for a moment even appear to ſuppoſe, that philoſophical truth and human happineſs are ſo irreconcilably at variance. I cannot expreſs my opinion on this ſubject ſo well as in the words of a moſt valuable, though generally neglected writer: "The ſcience of abſtruſe learning, when "completely attained, is like Achilles's ſpear, "that healed the wounds it had made before; ſo "this knowledge ſerves to repair the damage it-"ſelf had occaſioned, and this perhaps is all it is "good for; it caſts no additional light upon the "paths of life, but diſperſes the clouds with "which it had overſpread them before; it ad-"vances not the traveller one ſtep in his journey, "but conducts him back again to the ſpot from "whence he wandered. Thus the land of Philo-"ſophy conſiſts partly of an open champaign "country, paſſable by every common under-"ſtanding, and partly of a range of woods, tra-"verſable only by the ſpeculative, and where "they too frequently delight to amuſe themſelves.

"Since

" Since then we ſhall be obliged to make incur-
" ſions into this latter tract, and ſhall probably
" find it a region of obſcurity, danger, and diffi-
" culty, it behoves us to uſe our utmoſt endea-
" vours for enlightening and ſmoothing the way
" before us *." We ſhall, however, remain in the foreſt only long enough to viſit the fountains of thoſe ſtreams which flow from it, and which water and fertilize the cultivated region of Morals, to become acquainted with the modes of warfare practiſed by its ſavage inhabitants, and to learn the means of guarding our fair and fruitful land againſt their deſolating incurſions. I ſhall haſten from ſpeculations, to which I am naturally, perhaps, but too prone, and proceed to the more profitable conſideration of our practical duty.

II. The firſt and moſt ſimple part of ethics is that which regards the duties of private men towards each other, when they are conſidered apart from the ſanction of poſitive laws. I ſay, *apart* from that ſanction, not *antecedent* to it; for though we *ſeparate* private from political duties for the ſake of greater clearneſs and order in reaſoning, yet we are not to be ſo deluded by this mere arrangement of convenience as to ſuppoſe that human ſociety ever has ſubſiſted, or ever could ſubſiſt, without being protected by government

* Search's Light of Nature, by Abraham Tucker, Eſq. vol. i. pref. page xxxiii.

and bound together by laws. All theſe relative duties of private life have been ſo copiouſly and beautifully treated by the moraliſts of antiquity, that few men will now chooſe to follow them who are not actuated by the wild ambition of equalling Ariſtotle in preciſion, or rivalling Cicero in eloquence. They have been alſo admirably treated by modern moraliſts, among whom it would be groſs injuſtice not to number many of the preachers of the Chriſtian religion, whoſe peculiar character is that ſpirit of univerſal charity, which is the living principle of all our ſocial duties. For it was long ago ſaid, with great truth, by Lord Bacon, "that there never was any phi-"loſophy, religion, or other diſcipline, which "did ſo plainly and highly exalt that good "which is communicative, and depreſs the good "which is private and particular, as the Chriſ-"tian faith *." The appropriate praiſe of this religion is not ſo much, that it has taught new duties, as that it breathes a milder and more benevolent ſpirit over the whole extent of morals.

On a ſubject which has been ſo exhauſted, I ſhould naturally have contented myſelf with the moſt ſlight and general ſurvey, if ſome fundamental principles had not of late been brought into queſtion, which, in all former times, have

* Bacon, Dign. and Adv. of Learn. book ii.

been

been deemed too evident to require the ſupport of argument, and almoſt too ſacred to admit the liberty of diſcuſſion. I ſhall here endeavour to ſtrengthen ſome parts of the fortifications of morality which have hitherto been neglected, becauſe no man had ever been hardy enough to attack them. Almoſt all the relative duties of human life will be found more immediately, or more remotely, to ariſe out of the two great inſtitutions of property and marriage. They conſtitute, preſerve, and improve ſociety. Upon their gradual improvement depends the progreſſive civilization of mankind; on them reſts the whole order of civil life. We are told by Horace, that the firſt efforts of lawgivers to civilize men conſiſted in ſtrengthening and regulating theſe inſtitutions, and fencing them round with rigorous penal laws.

> Oppida cœperunt munire et ponere leges
> Neu quis fur eſſet, neu quis latro, neu quis adulter.
>
> 1 Serm. iii. 105.

A celebrated ancient orator, of whoſe poems we have but a few fragments remaining, has well deſcribed the progreſſive order in which human ſociety is gradually led to its higheſt improvements under the guardianſhip of thoſe laws which ſecure property and regulate marriage.

> Et leges ſanctas docuit, et chara jugavit
> Corpora conjugiis; et magnas condidit urbes.
>
> Frag. C. Licin. Calvi.

Theſe

Theſe two great inſtitutions convert the ſelfiſh as well as the ſocial paſſions of our nature into the firmeſt bands of a peaceable and orderly intercourſe; they change the ſources of diſcord into principles of quiet; they diſcipline the moſt ungovernable, they refine the groſſeſt, and they exalt the moſt ſordid propenſities; ſo that they become the perpetual fountain of all that ſtrengthens, and preſerves, and adorns ſociety; they ſuſtain the individual, and they perpetuate the race. Around theſe inſtitutions all our ſocial duties will be found at various diſtances to range themſelves; ſome more near, obviouſly eſſential to the good order of human life, others more remote, and of which the neceſſity is not at firſt view ſo apparent, and ſome ſo diſtant, that their importance has been ſometimes doubted, though upon more mature conſideration they will be found to be outpoſts and advanced guards of theſe fundamental principles; that man ſhould ſecurely enjoy the fruits of his labour, and that the ſociety of the ſexes ſhould be ſo wiſely ordered as to make it a ſchool of the kind affections, and a fit nurſery for the commonwealth.

The ſubject of *property* is of great extent. It will be neceſſary to eſtabliſh the foundation of the rights of acquiſition, alienation, and tranſmiſſion, not in imaginary contracts or a pretended ſtate of nature, but in their ſubſerviency to the ſubſiſtence

and well-being of mankind. It will not only be curious, but uſeful, to trace the hiſtory of property from the firſt looſe and tranſient occupancy of the ſavage, through all the modifications which it has at different times received, to that comprehenſive, ſubtle, and anxiouſly minute code of property which is the laſt reſult of the moſt refined civilization.

I ſhall obſerve the ſame order in conſidering the ſociety of the ſexes as it is regulated by the inſtitution of marriage *. I ſhall endeavour to lay open thoſe unalterable principles of general intereſt on which that inſtitution reſts: and if I entertain a hope that on this ſubject I may be able to add ſomething to what our maſters in morality have taught us, I truſt, that the reader will bear in mind, as an excuſe for my preſumption, that *they* were not likely to employ much argument where they did not foreſee the poſſibility of doubt. I ſhall alſo conſider the hiſtory † of marriage, and trace

* See on this ſubject an incomparable fragment of the firſt book of Cicero's Economics, which is too long for inſertion here, but which, if it be cloſely examined, may perhaps diſpel the illuſion of thoſe gentlemen, who have ſo ſtrangely taken it for granted, that Cicero was incapable of exact reaſoning.

† This progreſs is traced with great accuracy in ſome beautiful lines of Lucretius:

———Mulier conjuncta viro conceſſit in unum,
Caſtaque privatæ Veneris connubia læta
Cognita ſunt, prolemque ex ſe vidêre coortam:
TUM GENUS HUMANUM PRIMUM MOLLESCERE CŒPIT.
—— puerique

trace it through all the forms which it has aſſumed, to that decent and happy permanency of union, which has, perhaps above all other cauſes, contributed to the quiet of ſociety, and the refinement of manners in modern times. Among many other inquiries which this ſubject will ſuggeſt, I ſhall be led more particularly to examine the natural ſtation and duties of the female ſex, their condition among different nations, its improvement in Europe, and the bounds which Nature herſelf has preſcribed to the progreſs of that improvement; beyond which, every pretended advance will be a real degradation.

III. Having eſtabliſhed the principles of private duty, I ſhall proceed to conſider man under the important relation of ſubject and ſovereign, or, in other words, of citizen and magiſtrate. The duties which ariſe from this relation I ſhall endeavour to eſtabliſh, not upon ſuppoſed compacts, which are altogether chimerical, which muſt be admitted to be falſe in fact, which if they are to be conſidered as fictions, will be found to ſerve no purpoſe of juſt reaſoning, and to be

——————— pueriſque parentum
Blanditiis facile ingenium fregere ſuperbum.
Tunc et amicitiam cœperunt jungere habentes
Finitima inter ſe, nec lædere nec violare.
Et pueros commendârunt muliebreque ſeclum
Vocibus et geſtu cum balbé ſignificarent
IMBECILLORUM ESSE ÆQUUM MISERIER OMNIUM.
Lucret. lib. v. l. 1010—1022.

 equally

equally the foundation of a ſyſtem of univerſal deſpotiſm in Hobbes, and of univerſal anarchy in Rouſſeau; but on the ſolid baſis of general convenience. Men cannot ſubſiſt without ſociety and mutual aid; they can neither maintain ſocial intercourſe nor receive aid from each other without the protection of government; and they cannot enjoy that protection without ſubmitting to the reſtraints which a juſt government impoſes. This plain argument eſtabliſhes the duty of obedience on the part of citizens, and the duty of protection on that of magiſtrates, on the ſame foundation with that of every other moral duty; and it ſhows, with ſufficient evidence, that theſe duties are reciprocal; the only rational end for which the fiction of a contract could have been invented. I ſhall not encumber my reaſoning by any ſpeculations on the origin of government; a queſtion on which ſo much reaſon has been waſted in modern times; but which the ancients * in a higher ſpirit of philoſophy have never once mooted. If our principles be

* The introduction to the firſt book of Ariſtotle's Politics is the beſt demonſtration of the neceſſity of political ſociety to the well-being, and indeed to the very being, of man, with which I am acquainted. Having ſhown the circumſtances which render man neceſſarily a ſocial being, he juſtly concludes, "Και ὁτι ανθρωπος φυσει πολιτικον ζωον." Ariſt. de Rep. lib. i.

The ſame ſcheme of philoſophy is admirably purſued in the ſhort, but invaluable fragment of the ſixth book of Polybius, which deſcribes the hiſtory and revolutions of government.

juſt,

juſt, the origin of government muſt have been coeval with that of mankind; and as no tribe has ever yet been diſcovered ſo brutiſh as to be without ſome government, and yet ſo enlightened as to eſtabliſh a government by common conſent, it is ſurely unneceſſary to employ any ſerious argument in the confutation of a doctrine that is inconſiſtent with reaſon, and unſupported by experience. But though all inquiries into the origin of government be chimerical, yet the hiſtory of its progreſs is curious and uſeful. The various ſtages through which it paſſed from ſavage independence, which implies every man's power of injuring his neighbour, to legal liberty, which conſiſts in every man's ſecurity againſt wrong; the manner in which a family expands into a tribe, and tribes coaleſce into a nation; in which public juſtice is gradually engrafted on private revenge, and temporary ſubmiſſion ripened into habitual obedience; form a moſt important and extenſive ſubject of inquiry, which comprehends all the improvements of mankind in police, in judicature, and in legiſlation.

I have already given the reader to underſtand that the deſcription of liberty which ſeems to me the moſt comprehenſive, is that of *ſecurity againſt wrong*. Liberty is therefore the object of all government. Men are more free under every government, even the moſt imperfect, than they would

would be if it were poſſible for them to exiſt without any government at all: they are more ſecure from wrong, *more undiſturbed in the exerciſe of their natural powers, and therefore more free, even in the moſt obvious and groſſeſt ſenſe of the word*, than if they were altogether unprotected againſt injury from each other. But as general ſecurity is enjoyed in very different degrees under different governments, thoſe which guard it moſt perfectly, are by way of eminence called *free*. Such governments attain moſt completely the end which is common to all government. A free conſtitution of government and a good conſtitution of government are therefore different expreſſions for the ſame idea.

Another material diſtinction, however, ſoon preſents itſelf. In moſt civilized ſtates the ſubject is tolerably protected againſt groſs injuſtice from his fellows by impartial laws, which it is the manifeſt intereſt of the ſovereign to enforce. But ſome commonwealths are ſo happy as to be founded on a principle of much more refined and provident wiſdom. The ſubjects of ſuch commonwealths are guarded not only againſt the injuſtice of each other, but (as far as human prudence can contrive) againſt oppreſſion from the magiſtrate. Such ſtates, like all other extraordinary examples of public or private excellence and happineſs, are thinly ſcattered over the differ-

ent

ent ages and countries of the world. In them the will of the ſovereign is limited with ſo exact a meaſure, that his protecting authority is not weakened. Such a combination of ſkill and fortune is not often to be expected, and indeed never can ariſe, but from the conſtant though gradual exertions of wiſdom and virtue, to improve a long ſucceſſion of moſt favourable circumſtances.

There is indeed ſcarce any ſociety ſo wretched as to be deſtitute of ſome ſort of weak proviſion againſt the injuſtice of their governors. Religious inſtitutions, favourite prejudices, national manners, have in different countries, with unequal degrees of force, checked or mitigated the exerciſe of ſupreme power. The privileges of a powerful nobility, of opulent mercantile communities, of great judicial corporations, have in ſome monarchies approached more near to a control on the ſovereign. Means have been deviſed with more or leſs wiſdom to temper the deſpotiſm of an ariſtocracy over their ſubjects, and in democracies to protect the minority againſt the majority, and the whole people againſt the tyranny of demagogues. But in theſe unmixed forms of government, as the right of legiſlation is veſted in one individual or in one order, it is obvious that the legiſlative power may ſhake off all the reſtraints which the laws have impoſed on it. All ſuch governments, therefore, tend

towards deſpotiſm, and the ſecurities which they admit againſt miſ-government are extremely feeble and precarious. The beſt ſecurity which human wiſdom can deviſe, ſeems to be the diſtribution of political authority among different individuals and bodies, with ſeparate intereſts and ſeparate characters, correſponding to the variety of claſſes of which civil ſociety is compoſed, each intereſted to guard their own order from oppreſſion by the reſt; each alſo intereſted to prevent any of the others from ſeizing on excluſive, and therefore deſpotic power; and all having a common intereſt to co-operate in carrying on the ordinary and neceſſary adminiſtration of government. If there were not an intereſt to reſiſt each other in extraordinary caſes, there would not be liberty. If there were not an intereſt to co-operate in the ordinary courſe of affairs, there could be no government. The object of ſuch wiſe inſtitutions which make the ſelfiſhneſs of governors a ſecurity againſt their injuſtice, is to protect men againſt wrong both from their rulers and their fellows. Such governments are, with juſtice, peculiarly and emphatically called *free*; and in aſcribing that liberty to the ſkilful combination of mutual dependence and mutual check, I feel my own conviction greatly ſtrengthened by calling to mind, that in this opinion I agree with all the wiſe men who have ever deeply conſidered the principles of politics; with Ariſtotle and Polybius, with

with Cicero and Tacitus, with Bacon and Machiavel, with Monteſquieu and Hume *. It is impoſſible in ſuch a curſory ſketch as the preſent, even to allude to a very ſmall part of thoſe philoſophical principles, political reaſonings, and hiſtorical facts, which are neceſſary for the illuſtration of this momentous ſubject. In a full diſcuſſion of it I ſhall be obliged to examine the general frame of the moſt celebrated governments of ancient and modern times, and eſpecially of thoſe which have been moſt renowned for their freedom. The reſult of ſuch an examination will be, that no inſtitution ſo deteſtable as an abſolutely unbalanced government, perhaps ever exiſted; that the ſimple governments are mere creatures of the imagination of theoriſts, who have transformed names

* To the weight of theſe great names let me add the opinion of two illuſtrious men of the preſent age, as both their opinions are combined by one of them in the following paſſage: "He (Mr. Fox) always thought any of the ſimple unbalanced governments bad; ſimple monarchy, ſimple ariſtocracy, ſimple democracy; he held them all imperfect or vicious, all were bad by themſelves; the compoſition alone was good. Theſe had been always his principles, in which he agreed with his friend, Mr. Burke."—Mr. Fox on the Army Eſtimates, 9th Feb. 1790.

In ſpeaking of both theſe illuſtrious men, whoſe names I here join, as they will be joined in fame by poſterity, which will forget their temporary differences in the recollection of their genius and their friendſhip, I do not entertain the vain imagination that I can add to their glory by any thing that I can ſay. But it is a gratification to me to give utterance to my feelings; to expreſs the profound veneration with which I am filled for the memory of the one, and the warm affection which I cheriſh for the other, whom no one ever heard in public without admiration, or knew in private life without loving.

uſed for the convenience of arrangement into real polities; that, as conſtitutions of government approach more nearly to that unmixed and uncontrolled ſimplicity they become deſpotic, and as they recede farther from that ſimplicity they become free.

By the conſtitution of a ſtate, I mean "*the body "of thoſe written and unwritten fundamental laws "which regulate the moſt important rights of the "higher magiſtrates, and the moſt eſſential privileges* * "*of the ſubjects.*" Such a body of political laws muſt in all countries ariſe out of the character and ſituation of a people; they muſt grow with its progreſs, be adapted to its peculiarities, change with its changes, and be incorporated into its habits. Human wiſdom cannot form ſuch a conſtitution by one act, for human wiſdom cannot create the materials of which it is compoſed. The attempt, always ineffectual, to change by violence the ancient habits of men, and the eſtabliſhed order of ſociety, ſo as to fit them for an abſolutely new ſcheme of government, flows from the moſt preſumptuous ignorance, requires the ſupport of

* *Privilege*, in Roman juriſprudence, means the *exemption* of one individual from the operation of a law. Political privileges, in the ſenſe in which I employ the terms, mean thoſe rights of the ſubjects of a free ſtate, which are deemed ſo eſſential to the well-being of the commonwealth, that they are *excepted* from the ordinary diſcretion of the magiſtrate, and guarded by the ſame fundamental laws which ſecure his authority.

the moſt ferocious tyranny, and leads to conſequences which its authors can never foreſee; generally, indeed, to inſtitutions the moſt oppoſite to thoſe of which they profeſs to ſeek the eſtabliſhment *. But human wiſdom indefatigably employed for remedying abuſes, and in ſeizing favourable opportunities of improving that order of ſociety which ariſes from cauſes over which we have little control, after the reforms and amendments of a ſeries of ages, has ſometimes, though very rarely †, ſhown itſelf capable of building up a free conſtitution, which is "the growth of time and nature, "rather than the work of human invention." Such a conſtitution can only be formed by the wiſe imitation of "*the great innovator* TIME," "which, indeed, innovateth greatly, but quietly, "and by degrees ſcarce to be perceived ‡."

* See an admirable paſſage on this ſubject in Dr. Smith's Theory of Moral Sentiments, vol. ii. p. 101—112, in which the true doctrine of reformation is laid down with ſingular ability by that eloquent and philoſophical writer.—See alſo Mr. Burke's ſpeech on economical reform; and Sir M. Hale on the amendment of laws, in the collection of my learned and moſt excellent friend, Mr. Hargrave, p. 248.

† Pour former un gouvernement moderé, il faut combiner les puiſſances, les regler, les temperer, les faire agir, donner pour ainſi dire un leſt à l'une pour la mettre en état de reſiſter à une autre, c'eſt un chef d'œuvre de legiſlation que le hazard fait rarement, et que rarement on laiſſe faire à la prudence. Un gouvernement deſpotique au contraire ſaute pour ainſi dire aux yeux; il eſt uniforme partout; comme il ne faut que des paſſions pour l'etablir tout le monde eſt bon pour çela.
Monteſquieu, De L'Eſprit des Loix, liv. v. c. 14.

‡ Lord Bacon, Eſſay xxiv. Of Innovations.

 Without

Without deſcending to the puerile oſtentation of panegyric, on that of which all mankind confeſs the excellence, I may obſerve, with truth and ſoberneſs, that a free government not only eſtabliſhes an univerſal ſecurity againſt wrong, but that it alſo cheriſhes all the nobleſt powers of the human mind; that it tends to baniſh both the mean and the ferocious vices; that it improves the national character to which it is adapted, and out of which it grows; that its whole adminiſtration is a practical ſchool of honeſty and humanity; and that there the ſocial affections, expanded into public ſpirit, gain a wider ſphere, and a more active ſpring.

I ſhall conclude what I have to offer on government, by an account of the conſtitution of England. I ſhall endeavour to trace the progreſs of that conſtitution by the light of hiſtory, of laws, and of records, from the earlieſt times to the preſent age; and to ſhow how the general principles of liberty, originally common to it, with the other Gothic monarchies of Europe, but in other countries loſt or obſcured, were in this more fortunate iſland preſerved, matured, and adapted to the progreſs of civilization. I ſhall attempt to exhibit this moſt complicated machine, as our hiſtory and our laws ſhow it in action; and not as ſome celebrated writers have moſt imperfectly repreſented it, who have torn out a few of its more ſimple ſprings,

and,

and, putting them together, miſcall them the Britiſh conſtitution. So prevalent, indeed, have theſe imperfect repreſentations hitherto been, that I will venture to affirm, there is ſcarcely any ſubject which has been leſs treated as it deſerved than the government of England. Philoſophers of great and merited reputation * have told us that it conſiſted of certain portions of monarchy, ariſtocracy, and democracy; names which are, in truth, very little applicable, and which, if they were, would as little give an idea of this government, as an account of the weight of bone, of fleſh, and of blood in a human body, would be a picture of a living man. Nothing but a patient and minute inveſtigation of the practice of the government in all its parts, and through its whole hiſtory, can give us juſt notions on this important ſubject. If a lawyer, without a philoſophical ſpirit, be unequal to the examination of this great work of liberty and wiſdom, ſtill more unequal is a philoſopher without practical, legal, and hiſtorical knowledge; for the firſt may want ſkill, but the ſecond wants materials. The obſervations of Lord Bacon on political writers, in general, are moſt applicable to thoſe who have given us ſyſtematic deſcriptions of the Engliſh conſtitution. "All thoſe who have writ-

* The reader will perceive that I allude to MONTESQUIEU, whom I never name without reverence, though I ſhall preſume, with humility, to criticize his account of a government which he only ſaw at a diſtance.

"ten

"ten of governments have written as philoſo-
"phers, or as lawyers, *and none as ſtateſmen.* As
"for the philoſophers, they make imaginary laws
"for imaginary commonwealths, and their diſ-
"courſes are as the ſtars, which give little light
"becauſe they are ſo high."—"*Hæc cognitio ad*
"*viros civiles propriè pertinet*," as he tells us in another part of his writings; but unfortunately no experienced philoſophical Britiſh ſtateſman has yet devoted his leiſure to a delineation of the conſtitution, which ſuch a ſtateſman alone can practically and perfectly know.

In the diſcuſſion of this great ſubject, and in all reaſonings on the principles of politics, I ſhall labour, above all things, to avoid that which appears to me to have been the conſtant ſource of political error: I mean the attempt to give an air of ſyſtem, of ſimplicity, and of rigorous demonſtration, to ſubjects which do not admit it. The only means by which this could be done, was by referring to a few ſimple cauſes, what, in truth, aroſe from immenſe and intricate combinations, and ſucceſſions of cauſes. The conſequence was very obvious. The ſyſtem of the theoriſt, diſencumbered from all regard to the real nature of things, eaſily aſſumed an air of ſpeciouſneſs. It required little dexterity to make his argument appear concluſive. But all men agreed that it was utterly inapplicable to human affairs. The theoriſt

theoriſt railed at the folly of the world, inſtead of confeſſing his own; and the men of practice unjuſtly blamed philoſophy, inſtead of condemning the ſophiſt. The cauſes which the politician has to conſider are, above all others, multiplied, mutable, minute, ſubtile, and, if I may ſo ſpeak, evaneſcent; perpetually changing their form, and varying their combinations; loſing their nature, while they keep their name; exhibiting the moſt different conſequences in the endleſs variety of men and nations on whom they operate; in one degree of ſtrength producing the moſt ſignal benefit; and, under a ſlight variation of circumſtances, the moſt tremendous miſchiefs. They admit indeed of being reduced to theory; but to a theory formed on the moſt extenſive views, of the moſt comprehenſive and flexible principles, to embrace all their varieties, and to fit all their rapid tranſmigrations; a theory, of which the moſt fundamental maxim is, diſtruſt in itſelf, and deference for practical prudence. Only two writers of former times have, as far as I know, obſerved this general defect of political reaſoners; but theſe two are the greateſt philoſophers who have ever appeared in the world. The firſt of them is Ariſtotle, who, in a paſſage of his Politics, to which I cannot at this moment turn, plainly condemns the purſuit of a deluſive geometrical accuracy in moral reaſonings as the conſtant ſource of the groſſeſt error. The ſecond is Lord Bacon, who tells us,

with that authority of conſcious wiſdom which belongs to him, and with that power of richly adorning truth from the wardrobe of genius which he poſſeſſed above *almoſt* all men, "Civil knowledge is converſant about a ſubject which, above all others, is moſt immerſed in matter, and hardlieſt reduced to axiom *."

IV. I ſhall next endeavour to lay open the general principles of civil and criminal laws. On this ſubject I may with ſome confidence hope that I ſhall be enabled to philoſophize with better materials by my acquaintance with the laws of my own country, which it is the buſineſs of my life to practiſe, and of which the ſtudy has by habit become my favourite purſuit.

The firſt principles of juriſprudence are ſimple maxims of reaſon, of which the obſervance is immediately diſcovered by experience to be eſſential to the ſecurity of men's rights, and which pervade the laws of all countries. An account of the gra-

* This principle is expreſſed by a writer of a very different character from theſe two great philoſophers; a writer, "*qu'on n'appellera plus philoſophe, mais qu'on appellera le plus eloquent des ſophiſtes,*" with great force, and, as his manner is, with ſome exaggeration.

"Il n'y a point de principes abſtraits dans la politique. C'eſt une ſcience des calculs des combinaiſons et des exceptions, ſelon les lieux, les tems et les circonſtances."—*Lettre de Rouſſeau au Marquis de Mirabeau.*

The ſecond propoſition is true; but the firſt is not a juſt inference from it.

dual

dual application of these original principles, first, to more simple, and afterwards to more complicated cases, forms both the history and the theory of law. Such an historical account of the progress of men, in reducing justice to an applicable and practical system, will enable us to trace that chain, in which so many breaks and interruptions are perceived by superficial observers, but which in truth inseparably, though with many dark and hidden windings, links together the security of life and property with the most minute and apparently frivolous formalities of legal proceeding. We shall perceive that no human foresight is sufficient to establish such a system at once, and that, if it were so established, the occurrence of unforeseen cases would shortly altogether change it; that there is but one way of forming a civil code, either consistent with common sense, or that has ever been practised in any country, namely, that of gradually building up the law in proportion as the facts arise which it is to regulate. We shall learn to appreciate the merit of vulgar objections against the subtlety and complexity of laws. We shall estimate the good sense and the gratitude of those who reproach lawyers for employing all the powers of their mind to discover subtle distinctions for the prevention of injustice *; and we

* "The casuistical subtleties are not perhaps greater than "the subtleties of lawyers; *but the latter are innocent, and "even necessary.*"—Hume's Essays, vol. ii. p. 558.

ſhall at once perceive that laws ought to be neither more *ſimple* nor more *complex* than the ſtate of ſociety which they are to govern, but that they ought exactly to correſpond to it. Of the two faults, however, the exceſs of ſimplicity would certainly be the greateſt; for laws, more complex than are neceſſary, would only produce embarraſſment; whereas laws more ſimple than the affairs which they regulate would occaſion a defect of juſtice. More underſtanding * has perhaps been in this manner exerted to fix the rules of life than in any other ſcience; and it is certainly the moſt honourable occupation of the underſtanding, becauſe it is the moſt immediately ſubſervient to general ſafety and comfort. There is not, in my opinion, in the whole compaſs of human affairs, ſo noble a ſpectacle as that which is diſplayed in the progreſs of juriſprudence; where we may contemplate the cautious and unwearied exertions of a ſucceſſion of wiſe men through a long courſe of ages; withdrawing every caſe as it ariſes from the dangerous power of diſcretion, and ſubjecting it to inflexible rules; extending the dominion of juſtice and reaſon, and gradually contracting, within the narroweſt poſſible limits, the domain

* "Law," ſaid Dr. Johnſon, "is the ſcience in which the "greateſt powers of underſtanding are applied to the great-"eſt number of facts." Nobody, who is acquainted with the variety and multiplicity of the ſubjects of juriſprudence, and with the prodigious powers of diſcrimination employed upon them, can doubt the truth of this obſervation.

of

of brutal force and of arbitrary will. This ſubject has been treated with ſuch dignity by a writer who is admired by all mankind for his eloquence, but who is, if poſſible, ſtill more admired by all competent judges for his philoſophy; a writer, of whom I may juſtly ſay, that he was "*graviſſimus* "*et dicendi et intelligendi auctor et magiſter*;" that I cannot refuſe myſelf the gratification of quoting his words:—"The ſcience of juriſprudence, the "pride of the human intellect, which, with all its "defects, redundancies, and errors, is the col- "lected reaſon of ages combining the principles "of original juſtice with the infinite variety of "human concerns *."

I ſhall exemplify the progreſs of law, and illuſtrate thoſe principles of univerſal juſtice on which it is founded, by a comparative review of the two greateſt civil codes that have been hitherto formed—thoſe of Rome and of England †; of their agreements and diſagreements, both in general proviſions, and in ſome of the moſt important parts of their minute practice. In this part of the

* Burke's Works, vol. iii. p. 134.

† On the intimate connexion of theſe two codes, let us hear the words of Lord Holt, whoſe name never can be pronounced without veneration, as long as wiſdom and integrity are revered among men:—"Inaſmuch *as the laws of all na-* "*tions are doubtleſs raiſed out of the ruins of the civil law*, as "all governments are ſprung out of the ruins of the Roman "empire, it muſt be owned *that the principles of our law are* "*borrowed from the civil law*, therefore grounded upon the "ſame reaſon in many things."—12 Mod. 482.

courſe, which I mean to purſue with ſuch detail as to give a view of both codes, that may perhaps be ſufficient for the purpoſes of the general ſtudent, I hope to convince him that the laws of civilized nations, particularly thoſe of his own, are a ſubject moſt worthy of ſcientific curioſity; that principle and ſyſtem run through them even to the minuteſt particular, as really, though not ſo apparently, as in other ſciences, and applied to purpoſes more important than in any other ſcience. Will it be preſumptuous to expreſs a hope, that ſuch an inquiry may not be altogether an uſeleſs introduction to that larger and more detailed ſtudy of the law of England, which is the duty of thoſe who are to profeſs and practiſe that law?

In conſiderng the important ſubject of criminal law it will be my duty to found, on a regard to the general ſafety, the right of the magiſtrate to inflict puniſhments, even the moſt ſevere, if that ſafety cannot be effectually protected by the example of inferior puniſhments. It will be a more agreeable part of my office to explain the temperaments which Wiſdom, as well as Humanity, preſcribes in the exerciſe of that harſh right, unfortunately ſo eſſential to the preſervation of human ſociety. I ſhall collate the penal codes of different nations, and gather together the moſt accurate ſtatement of the reſult of experience with reſpect to the efficacy of lenient and ſevere puniſhments; and

and I ſhall endeavour to aſcertain the principles on which muſt be founded both the proportion and the appropriation of penalties to crimes.

As to the *law of criminal proceeding*, my labour will be very eaſy; for on that ſubject an Engliſh lawyer, if he were to delineate the model of perfection, would find that, with few exceptions, he had tranſcribed the inſtitutions of his own country. The whole ſubject of my lectures, of which I have now given the outline, may be ſummed up in the words of Cicero:—"Natura enim juris explicanda eſt nobis, eaque ab hominis repetenda naturâ; conſiderandæ leges quibus civitates regi debeant; tum hæc tractanda quæ compoſita ſunt et deſcripta, jura et juſſa populorum; in quibus NE NOSTRI QUIDEM POPULI LATEBUNT QUÆ VOCANTUR JURA CIVILIA."

Cic. de Leg. lib. i. c. 5.

V. The next great diviſion of the ſubject is the law of nations, ſtrictly and properly ſo called. I have already hinted at the general principles on which this law is founded. They, like all the principles of natural juriſprudence, have been more happily cultivated, and more generally obeyed, in ſome ages and countries than in others; and, like them, are ſuſceptible of great variety in their application, from the character and uſages of nations. I ſhall conſider theſe principles in the gradation

of thoſe which are neceſſary to any tolerable intercourſe between nations: thoſe which are eſſential to all well-regulated and mutually advantageous intercourſe; and thoſe which are highly conducive to the preſervation of a mild and friendly intercourſe between civilized ſtates. Of the firſt claſs, every underſtanding acknowledges the neceſſity, and ſome traces of a faint reverence for them are diſcovered even among the moſt barbarous tribes; of the ſecond, every well-informed man perceives the important uſe, and they have generally been reſpected by all poliſhed nations; of the third, the great benefit may be read in the hiſtory of modern Europe, where alone they have been carried to their full perfection. In unfolding the firſt and ſecond claſs of principles, I ſhall naturally be led to give an account of that law of nations, which, in greater or leſs perfection, regulated the intercourſe of ſavages, of the Aſiatic empires, and of the ancient republics. The third brings me to the conſideration of the law of nations, as it is now acknowledged in Chriſtendom. From the great extent of the ſubject, and the particularity to which, for reaſons already given, I muſt here deſcend, it is impoſſible for me, within any moderate compaſs, to give even an outline of this part of the courſe. It comprehends, as every reader will perceive, the principles of national independence, the intercourſe of nations in peace, the privileges of embaſſadors

baſſadors and inferior miniſters, the commerce of private ſubjects, the grounds of juſt war, the mutual duties of belligerent and neutral powers, the limits of lawful hoſtility, the rights of conqueſt, the faith to be obſerved in warfare, the force of an armiſtice, of ſafe conducts and paſſports, the nature and obligation of alliances, the means of negotiation, and the authority and interpretation of treaties of peace. All theſe, and many other moſt important and complicated ſubjects, with all the variety of moral reaſoning, and hiſtorical examples, which is neceſſary to illuſtrate them, muſt be fully examined in this part of the lectures, in which I ſhall endeavour to put together a tolerably complete practical ſyſtem of the law of nations, as it has for the laſt two centuries been recogniſed in Europe.

" *Le droit des gens* eſt naturellement fondé ſur " ce principe; que les diverſes nations doivent ſe " faire, dans la paix, le plus de bien, et dans la " guerre le moins de mal, qu'il eſt poſſible, ſans " nuire a leurs veritables intérêts.

" L'objet de la guerre c'eſt la victoire; celui " de la victoire la conquête; celui de la conquête " la conſervation. De ce principe & du prece- " dent doivent deriver toutes les loix qui forment " le droit des gens.

" Toutes

" Toutes les nations ont un droit des gens; les " *Iroquois* meme qui mangent leur priſonniers en " ont un. Ils envoient & reçoivent des embaſ- " ſades; ils connoiſſent les droits de la guerre et " de la paix: le mal eſt que ce droit des gens n'eſt " pas fondé ſur les vrais principes."—*De l'Eſprit des Loix*, liv. i. c. 3.

VI. As an important ſupplement to the practical ſyſtem of our modern law of nations, or rather as a neceſſary part of it, I ſhall conclude with a ſurvey of the *diplomatic and conventional law of Europe*; of the treaties which have materially affected the diſtribution of power and territory among the European ſtates; the circumſtances which gave riſe to them, the changes which they effected, and the principles which they introduced into the public code of the Chriſtian commonwealth. In ancient times the knowledge of this conventional law was thought one of the greateſt praiſes that could be beſtowed on a name loaded with all the honours that eminence in the arts of peace and of war can confer:

" Equidem exiſtimo, judices, cum in omni " genere ac varietate artium, etiam illarum, quæ " ſine ſummo otio non facile diſcuntur, Cn. Pom- " peius excellat, ſingularem quandam laudem ejus " et præſtabilem eſſe ſcientiam, *in fœderibus, pac-* " *tionibus, conditionibus, populorum, regum, exterarum* " *nationum*;

" *nationum:* in univerſo denique belli jure ac pacis." *Cic. Orat. pro L. Corn. Balbo*, c. 6.

Information on this ſubject is ſcattered over an immenſe variety of voluminous compilations; not acceſſible to every one, and of which the peruſal can be agreeable only to very few. Yet ſo much of theſe treaties has been embodied into the general law of Europe, than no man can be maſter of it who is not acquainted with them. The knowledge of them is neceſſary to negotiators and ſtateſmen; it may ſometimes be important to private men in various ſituations in which they may be placed; it is uſeful to all men who wiſh either to be acquainted with modern hiſtory, or to form a ſound judgment on political meaſures. I ſhall endeavour to give ſuch an abſtract of it as may be ſufficient for ſome, and a convenient guide for others in the farther progreſs of their ſtudies. The treaties, which I ſhall more particularly conſider, will be thoſe of Weſtphalia, of Oliva, of the Pyrenees, of Breda, of Nimeguen, of Ryſwick, of Utrecht, of Aix-la-Chapelle, of Paris (1763), and of Verſailles (1783). I ſhall ſhortly explain the other treaties, of which the ſtipulations are either alluded to, confirmed, or abrogated in thoſe which I conſider at length. I ſhall ſubjoin an account of the diplomatic intercourſe of the European powers with the Ottoman Porte, and with other princes and ſtates who are without the pale of our ordi-